

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

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AutoBeef, LLC d/b/a CarComplaints.com )

Plaintiff )

v. )


EVOX Productions, LLC )

Defendant )

Civil Action No. 2:16-cv-322

COMPLAINT FOR  
DECLARATORY JUDGMENT

DEMAND FOR JURY TRIAL

  
DEPUTY CLERK

**COMPLAINT AND JURY DEMAND**

AutoBeef, LLC d/b/a CarComplaints.com ("CarComplaints.com"), for its Complaint against Defendant EVOX Productions, LLC ("EVOX") alleges as follows:

**Nature of Action**

1. This is a declaratory judgment action on behalf of CarComplaints.com for non-infringement of United States copyright laws and, in the alternative, declaration of appropriate copyright remedies under the U.S. Copyright Act.

**Parties**

2. Plaintiff CarComplaints.com is a Vermont limited liability company, with a principal place of business in South Hero, Vermont.

3. On information and belief, Defendant EVOX is a Delaware limited liability company, with a principal place of business in Rancho Dominguez, California.

**Jurisdiction and Venue**

4. The Court has jurisdiction under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202 and under the laws of the United States concerning actions relating to copyright, 28 U.S.C. § 1338(a).

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

6. On information and belief, this Court has personal jurisdiction over Defendant because Defendant conducts business transactions in this State, including soliciting copyright license agreements in this State.

### **Facts**

7. CarComplaints.com operates a website at [www.carcomplaints.com](http://www.carcomplaints.com) that provides resources and information regarding vehicles, including providing an online forum where users can share and search data about vehicle complaints by owners (the “Website”).

8. Until recently, the Website has displayed approximately 5,337 low-resolution, thumbnail-size, generic images of vehicles taken from the front at a  $\frac{3}{4}$  angle (the “Accent Graphics”). These Accent Graphics were not used for the purpose of identifying vehicles and showing users those vehicles’ appearance; they were used only as visual design accents. The Accent Graphics were therefore ancillary to the functionality and purpose of the Website.

9. CarComplaints.com created the Accent Graphics by locating vehicle images using Google Image search and other search engines. The images were then scaled down to approximately 150x75 pixels – less than the size of a postage stamp – and saved on a transparent background.

10. Numerous vehicle images like the Accent Graphics are in the public domain, including images currently or previously available through vehicle manufacturer websites. Because manufacturer imagery is publicized and freely distributed, these images are typically widely available on the internet even after a manufacturer has stopped distributing a particular model.

11. To create the Accent Graphics, CarComplaints.com used only source images that it reasonably believed were in the public domain. The images CarComplaints.com selected did not contain any logo, copyright notice, watermark, or other copyright management information indicating an owner of the images.

12. On or about March 4, 2016, CarComplaints.com received a demand letter from EVOX claiming that CarComplaints.com's display of approximately 367 of the 5,337 Accent Graphics on the Website constituted infringement of EVOX's copyright in certain vehicle images (the "Accused Images"). EVOX claimed that 278 of the Accused Images were registered with the Copyright Office, and threatened that CarComplaints.com could be subject to statutory damages "exceeding \$40 million" for willful copyright infringement.

13. Also in this letter, EVOX accused CarComplaints.com of removing EVOX's logo from the Accused Images before displaying them on the Website, in violation of the Digital Millennium Copyright Act ("DMCA"). EVOX threatened that CarComplaints.com could be subject to statutory damages of up to \$6.95 million for violation of the DMCA.

14. On information and belief, hundreds of thousands of vehicle images similar to the Accent Graphics, including manufacturer images that are visually indistinguishable from the Accused Images, are freely available online.

15. On information and belief, EVOX has caused its vehicle images, including the Accused Images, to proliferate widely without any copyright information, including by failing to police the activities of its own licensees.

16. After receiving EVOX's March 4, 2016 letter, CarComplaints.com promptly took down the entire library of Accent Graphics, including the Accused Images, from the

Website. This did not affect traffic to the Website or otherwise degrade the user experience in any measureable form.

17. On or about April 1, 2016, CarComplaints.com conveyed, through counsel, that it had removed the Accused Images from the Website. CarComplaints.com also explained its belief that the Accused Images were in the public domain, and provided extensive information demonstrating the lack of copyright information and the widespread availability of visually indistinguishable manufacturer imagery.

18. By letter of May 10, 2016, EVOX, through counsel, repeated its prior threats of statutory damages awards exceeding \$46 million for willful copyright infringement and violation of the DMCA. EVOX further claimed that \$903,500 was the “absolute minimum statutory award” to which EVOX was entitled based on CarComplaints.com’s alleged non-innocent copyright infringement and violation of the DMCA.

19. Although the parties, through counsel, have exchanged further correspondence and otherwise attempted to reach a settlement, the negotiations reached an impasse on or around December 1, 2016, when EVOX made a “final offer” demanding “statutory damages” in an amount per work that is (a) far above what the statute provides in cases of innocent infringement and (b) far higher than CarComplaints.com would have paid to either obtain alternate images or license from EVOX use of the Accused Images. EVOX also threatened to commence litigation against CarComplaints.com and its owner if CarComplaints.com did not accept this final offer by the end of the year.

20. CarComplaints.com believes that it could have obtained, online at no cost, public domain source images that were virtually identical to the Accused Images. On information and belief, had CarComplaints.com desired to license the Accused Images from

EVOX for use on the Website, it would have paid no more than approximately \$950/month for such license (“Market Value”).

21. On information and belief, EVOX purports to own various images of cars and copyright registrations covering its images.

22. On information and belief, EVOX tracks the use of its images by others, and sends cease and desist letters to any third party it discovers using its images.

23. On information and belief, if EVOX does not receive the damages it demands from such third parties, EVOX files a copyright infringement lawsuit, generally in the District Court for the Central District of California, demanding statutory damages for copyright infringement and, in many cases, violation of the DMCA, as well as attorney’s fees.

24. On information and belief, EVOX has filed at least 5 such lawsuits since January 2016.

25. The above allegations are incorporated in the claims below.

**COUNT I**  
**Declaratory Judgment of No DMCA Violation**

26. CarComplaints.com has a reasonable apprehension of suit by EVOX alleging violation of the DMCA.

27. There is a substantial and continuing justiciable controversy between CarComplaints.com and EVOX as to EVOX’s right to threaten or maintain suit for violation of the DMCA.

28. CarComplaints.com did not remove any copyright notices or other copyright management information from the Accused Images prior to using such images as source images for the Accent Graphics, and therefore did not violate the DMCA.

29. The Court should issue a declaratory judgment stating that EVOX is without right or authority to threaten or to maintain suit against CarComplaints.com for alleged violation of the DMCA .

**COUNT II**  
**Declaratory Judgment of No Copyright Infringement**

30. CarComplaints.com has a reasonable apprehension of suit by EVOX alleging copyright infringement.

31. There is a substantial and continuing justiciable controversy between CarComplaints.com and EVOX as to EVOX's right to threaten or maintain suit for infringement of the Accused Images by CarComplaints.com, as to the validity, enforceability and scope of the alleged copyright in the Accused Images, and as to whether CarComplaints.com's use of the Accused Images infringes any valid and enforceable rights owned by EVOX.

32. EVOX is estopped from claiming infringement because it knowingly allowed the Accused Images to proliferate online without any copyright information.

33. On information and belief, CarComplaints.com's use of the Accused Images does not infringe any valid and enforceable copyright owned by EVOX.

34. In the alternative, if CarComplaints.com's use of the Accused Images does infringe any copyright owned by EVOX, CarComplaints.com's infringement was innocent and remedies should not exceed either: (a) statutory damages in the amount of \$200 per work or (b) Market Value.

35. The Court should issue a declaratory judgment stating that EVOX is without right or authority to threaten or to maintain suit against CarComplaints.com for alleged copyright infringement, that no valid and enforceable copyright is infringed by

CarComplaints.com based on its use of the Accused Images, or if infringement is found, it was innocent and remedies should not exceed either (a) \$200 per work or (b) Market Value.

**PRAYER FOR RELIEF**

WHEREFORE, CarComplaints.com prays for relief as follows:

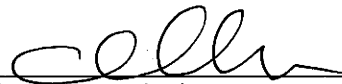
- 1) Entry of judgment that EVOX is without right or authority to threaten or to maintain suit against CarComplaints.com for alleged violation of the DMCA.
- 2) Entry of judgment that EVOX is without right or authority to threaten or to maintain suit against CarComplaints.com for alleged copyright infringement and that no valid and enforceable copyright is infringed by CarComplaints.com based on its use of the Accused Images, or if infringement is found, it was innocent and remedies should not exceed either (a) \$200 per work or (b) Market Value.
- 3) Entry of a preliminary injunction enjoining EVOX, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with EVOX from threatening CarComplaints.com or any of its owners, agents, servants, or employees with copyright litigation or charging any of them either verbally or in writing with copyright infringement or violation of the DMCA.
- 4) Entry of judgment for its costs and reasonable attorney fees incurred by CarComplaints.com.
- 5) Such other and further relief as the Court may deem appropriate.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury.

Dated at Burlington, Vermont this 12th day of December, 2016.

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